
From: Wayland, Joshua
Sent: Friday, February 18, 2022 3:59 PM
To: Floyd, Kathryn K.
Cc: Tabachnick, Alan
Subject: FD 36284: Draft Tribal Participation Plan
Attachments: FD_36284_Draft_TPP_Comments.pdf

Kathryn,

It was a nice speaking with you yesterday. I forgot to mention on our call that OEA and the Ute Indian Tribe have completed our initial review of the draft Tribal Participation Plan (TPP) that the Seven County Infrastructure Coalition prepared under the Section 106 Programmatic Agreement for the proposed Uinta Basin Railway. I have attached our joint comments on the draft TPP. After you have had the chance to look at these, please feel free to reach out and we will discuss next steps. Thank you and have a great weekend.

Best,
Josh

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Uinta Basin Railway Project

Docket No. FD 36284

Comments on the draft Tribal Participation Plan

The Surface Transportation Board's (Board) Office of Environmental Analysis (OEA) and the Ute Indian Tribe of the Uintah and Ouray Reservation (Ute Indian Tribe) have reviewed the draft Tribal Participation Plan (TPP) prepared by the Seven County Infrastructure Coalition (Coalition) as required by the executed Programmatic Agreement (PA) for the proposed Uinta Basin Railway project. The TPP is one of the most important and foundational documents to be prepared as the project moves forward into final design and then construction, should the Board authorize construction and operation of the proposed rail line. It should lay out the process of consulting with, and involving, the Ute Indian Tribe on all aspects of Section 106 of the National Historic Preservation Act (NHPA).

The TPP should recognize that the Ute Indian Tribe takes a broad view of cultural resources that includes not only archaeological sites and historic buildings, but also multiple environmental elements as part of a cultural system. These includes geographic features, geology, hydrology, plants, and animals, as well as evidence of past human activities on the landscape. Although they are discussed in different chapters of the Environmental Impact Statement (EIS) that OEA prepared for the proposed rail line, the Ute Indian Tribe considers these elements as interconnected. Although the TPP can focus on the identification and treatment of cultural resources under Section 106, it should also recognize that consultation with the Ute Indian Tribe is a broader requirement that should continue under all stages of project planning, design, construction, and implementation.

The TPP is meant to govern the overall process for carrying forward the Section 106 process. It should contain additional sections and significantly more detail than is contained in the draft that the Coalition prepared, with the overarching goal of enabling the Ute Indian Tribe to be heard, and to have their views and input incorporated throughout the TPP.

The TPP should be revised in accordance with the following comments:

- Include a full introduction and project history, a summary of the Section 106 consultation efforts, and an explanation of the involvement of the Ute Indian Tribe as a consulting party.
- Include a section on the jurisdictional issues related to alternatives crossing tribal lands, to understand the roles and responsibilities of the parties in this TPP.
- Include a more detailed project description, with overviews of the alternatives, as well as information on design and construction elements anticipated (e.g., at-grade crossings, bridges, tunnels, major cuts and/or fill areas, etc.). This will help provide context for the TPP.
- Provide an overview of the Section 106 efforts on the project to date (e.g., the extent of cultural resources surveys and evaluations conducted) and what work remains to be done under the PA. This will allow for a better understanding of what was done, what still needs to be done prior to construction, and then what the process would be during the construction phase. This overview does not have to be lengthy but should summarize the overall Section 106 process to date and refer back to the technical reports for readers wanting additional detail.

- Expand the construction monitoring section, focusing on the role of the Ute Indian Tribe during all of these processes, to include:
 1. Monitoring Procedures, including the personnel and organizations that would be involved (e.g., the Coalition (including their cultural resource consultant), OEA, the Ute Indian Tribe, etc.);
 2. Monitoring Field Methods (actions that may occur during monitoring);
 3. Pausing Construction Activities due to a discovery;
 4. Contaminated Materials (i.e., if there are any areas of concern and general procedures if encountered);
 5. Non-Compliance with monitoring procedures by construction personnel;
 6. Disputes (e.g., between Tribal monitors, archaeologists, construction personnel);
 7. Documentation (Monitoring logs, Weekly/Monthly Reports);
 8. Site Records for cultural resources discovered during monitoring; and
 9. Final Report to be prepared at conclusion of all project-related ground disturbing activities.
- Include recognition of the Ute Indian Tribe's designation as a Tribal Historic Preservation Office (THPO) including a description of the THPO's authorities as well as the need for the TPP to comply with protocols being established for the THPO that will apply within the exterior boundaries of the Tribe's Uintah and Ouray Reservation and beyond the Reservation.
- Include the plan for Unanticipated Discoveries and the applicability of NAGPRA (as appropriate). The identification of human remains (of tribal ancestry) during the field surveys will potentially fall under NAGPRA, so that would also be described and included in the Research and Survey Plan. In the case of an unanticipated discovery, it should be made clear that the Ute Indian Tribe would be notified (along with the other appropriate Section 106 consulting parties).
- Expand the section on Sensitivity Training for Construction Contractors/Personnel, building upon the details and framework in the PA and specifying the process for developing and implementing training.
- Expand and clarify the sections on In-Person Meetings and Teleconferences and Communication Protocols. The TPP needs to lay out this process in detail, as communication procedures are one of the most important aspects of the plan. A detailed process should be established to start the project, and it can be amended as necessary if conditions change over time. This section should clearly lay out a proposed schedule for regular teleconference meetings (e.g., monthly) during the planning and surveying phase of the project, and during the more complex monitoring during construction phase (e.g., biweekly). The section should indicate whether in-person meetings are anticipated, and if so, under what circumstances or conditions. It should also clearly indicate whether Ute Indian Tribe has requested specific protocols for communication to meet their needs. Lines of communication should be included to avoid confusion during implementation.
- Identify all the parties that will be part of this plan and specific key personnel for each role. This should include the Ute Indian Tribe, OEA, the Coalition (or other project partner), the consultants that would conduct the cultural resources tasks, and any other entities that would have a role in the implementation of elements within the TPP. This section should include the name of the individual,

their association, their role on the project, and their contact information (email, phone, address). Clear identification of personnel and roles will enhance the lines of communication.

- Address as many of the items in Stipulation III.B of the PA as are appropriate for this TPP, as per the structure of the PA.